No. 03-9877

IN THE

Supreme Court Of The United States

JON B. CUTTER, ET AL.,

Petitioners,

v.

REGINALD WILKINSON, ET AL.,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

BRIEF OF *AMICI CURIAE* AMERICAN JAIL ASSOCIATION, ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS, NATIONAL MAJOR GANG TASK FORCE, NATIONAL SHERIFFS' ASSOCIATION, NEW YORK STATE SHERIFFS' ASSOCIATION, AND NORTH AMERICAN ASSOCIATION OF WARDENS & SUPERINTENDENTS IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae submit this brief in order to provide the Court with an understanding of the problem presented by gang violence in correctional institutions, and how that problem is impacted by the Religious Land Use And Institutionalized Persons Act.[1]

The American Jail Association is a national, non-profit organization formed in 1981. It is dedicated to supporting those who work in and operate the Nation's jails. It conducts training conferences and certification programs for jail officers and managers, and is the publisher of *American Jails* magazine. The association has approximately 4,200 members nationwide.

The Association of State Correctional Administrators is a not-for-profit organization formed in 1970. Its membership consists of the Directors of Corrections for the 50 States, the Federal Bureau of Prisons, and four large urban jail systems, as well as U.S. territories and commonwealths. The Association's major goals are to influence and shape correctional policy; to identify proven correctional practices, standards, and performance measures; and to share with its members training and professional development programs designed to enhance members' professional skills and awareness of advancements in the profession.

The National Major Gang Task Force is a non-profit organization formed in 1993 for the purpose of minimizing the effects of security threat groups, gangs and terrorists in

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[1] Letters of consent to the filing of this brief have been submitted to the Court. No counsel for any of the parties authored this brief in whole or in part. Furthermore, no person or entity, other than the *amici curiae*, their members or their counsel, made any monetary contribution to the preparation or submission of this brief.

jails, prisons and communities. It conducts annual training conferences, conducts studies, and partners with corrections and law enforcement officials throughout the country, regarding gang intervention and management strategies. The National Major Gang Task Force has approximately 1,600 members nationwide.

The National Sheriffs' Association was founded in 1940 to represent the criminal justice and law enforcement activities of the Nation's 3,088 Offices of Sheriff, including the operation of local jails. It is a non-profit association with over 21,000 members. Among other things, it provides training to jail officers and supervisors, and prepares jail manuals, guidelines and handbooks relating to all aspects of jail operations.

The New York State Sheriffs' Association is a non-profit organization formed in 1934 for the purpose of assisting Sheriffs in the efficient and effective delivery of Sheriffs' services to the public, including maintenance and operation of county jails. Among other things, it develops accreditation standards for jail administrators, and conducts conferences and training sessions for jail administrators and other supervisory jail officers. The Association is composed of all Sheriffs in the State of New York.

The North American Association of Wardens & Superintendents is a non-profit organization formed in the 1940s. It is committed to promoting and supporting the needs of jail and prison wardens, superintendents and administrators throughout North America. It provides a forum, through conferences and newsletters, for jail and prison officials to share and exchange information and ideas, and offers training workshops in connection with other professional organizations. The Association has approximately 900 members throughout the United States and Canada.

SUMMARY OF ARGUMENT

Correctional institutions are highly regulated environments in which security concerns dominate. In particular, gang violence is one of the most pressing problems currently facing corrections administrators throughout the country. One recent survey has estimated that approximately one-fourth of all inmates in adult male state correctional institutions are gang members. The rate is even higher in maximum security institutions, with roughly one-third of the inmate population belonging to a gang or other security threat group. As the evidentiary record in this matter reveals, controlling gang violence is not simply a matter of administrative convenience, but literally a matter of life and death for inmates and correctional staff.

Given the highly regulated nature of correctional institutions, participation in religious services is one of the few opportunities for inmates to obtain special privileges or exemptions from normal limitations on daily activities. Gang members are aware of the legal protections afforded to religious practice, and unfortunately, seek to take advantage of these special privileges. Gang members use religious affiliation and practice for recruitment and identification of members, and as a means of organizing criminal activities in correctional institutions.

The least restrictive means test -- mandated by the Religious Land Use And Institutionalized Persons Act ("RLUIPA") and the former Religious Freedom Restoration Act ("RFRA") -- has greatly exacerbated gang members' abuse of religious accommodations. Specifically, the least restrictive means test has: (1) promoted the proliferation of various religions, including numerous pagan "religions" dominated by white supremacists, such as Odinism and Asatru; (2) caused the number of inmate "religious" demands to skyrocket, creating an excessive burden on correctional

chaplains and officials, and often causing a reduction in the provision of religious services to inmates; and (3) caused an excessive entanglement of corrections officials with religion by forcing those officials to scrutinize closely every claimed "religion" and every request for "religious" accommodation. In sum, RLUIPA restricts the ability of corrections officials to address the security problems presented by gangs in correctional institutions throughout the country.

ARGUMENT

I. Gangs And Gang Violence Are Among The Most Pressing Concerns In The Highly Regulated Corrections Environment.

Correctional institutions are highly regulated environments in which security concerns dominate. Even seemingly "administrative or technical concerns," including "uniformity of schedule, appearance, and diet," involve considerations of security. *See Developments In The Law -- The Law Of Prisons, In The Belly Of The Whale: Religious Practice In Prison*, 115 Harv. L. Rev. 1891, 1891, 1899 (2002) ("Developments"). Corrections administrators must consider not only the administrative costs of a policy, but also the "likelihood of inmate resentment, the appearance of discrimination, and the possibility of inmates manipulating the system for personal advantage[.]" *Id.* at 1899.

Gangs and gang violence are the primary threats to management of the highly regulated corrections environment. *See* Fleisher, Mark S. and Decker, Scott H., *An Overview Of The Challenge Of Prison Gangs*, Corrections Management Quarterly (Winter 2001) at 2. In fact, the problem of gangs and gang violence in correctional institutions is widespread and growing. A 1999 survey of correctional institutions in 47 states concluded that approximately "one fourth of all male inmates confined in adult state correctional institutions are

gang members." Knox, George W., Ph.D., *A National Assessment Of Gangs And Security Threat Groups (STGs) In Adult Correctional Institutions: Results Of The 1999 Adult Corrections Survey*, Journal Of Gang Research, Vol. 7, No. 3 (Spring 2000) ("A National Assessment") at 5. This represented a dramatic increase from the 1991 gang density level of only one in ten male inmates. *Id.*

Furthermore, it is widely agreed that gangs are "responsible for most prison violence." Fleisher, *supra*, at 5. A 1985 study, for example, found that gangs "caused 50 percent or more of the prison violence" at a time when gang density was estimated at only three percent of the prison population. *Id.* A 2002 study of gang violence in Arizona correctional institutions concluded that gang members "commit serious disciplinary violations at rates two to three times higher than do non-gang inmates housed in units of the same security level" and "members of certified prison gangs (STGs) recorded the highest violation rates in the case of assault, drug violations, rioting, weapons violations, and other violent violations." Fischer, Daryl R., Ph.D., *Arizona Department Of Corrections: Security Threat Group (STG) Program Evaluation, Final Report* (National Criminal Justice Reference Service 2002) at ii; *see also* Gaes, Gerald G., et al., *The Influence Of Prison Gang Affiliation On Violence And Other Prison Misconduct*, The Prison Journal, Vol. 82, No. 3 (2002).[2]

Indeed, the increase in gang density during the 1990s corresponded to an increase in gang violence within adult state correctional institutions. In 1992, "only one out of ten institutions reported gang members being a problem in terms of assaults on the staff." Knox, A National Assessment, *supra*, at 6. By 1999, however, "about one-third of all adult

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[2] The Knox, Fischer and Gaes studies cited above are available online at http://www.ncjrs.org/gangs/publications.html.

state correctional institutions would report gang members as a problem in terms of assaults on staff." *Id.* Similarly, in 1992, only "a fourth of the institutions reported gang members as a problem in terms of threats against staff members." *Id.* at 7. By 1999, that percentage had increased to one half of all correctional institutions. *Id.*

The problem of gangs and gang violence is particularly acute in maximum security institutions because gang density increases by level of institutional security. "[I]n a typical maximum security adult state correctional institution, in the year 1999, about 32.7 percent of the inmates could be expected to be gang/STG members." Knox, A National Assessment, *supra*, at 5. This is not surprising given that the "highest security prisons hold the most violent and disruptive inmates who are most likely to be as disruptive inside as they were outside." Fleisher, *supra*, at 2.

The evidentiary record in this matter confirms the findings of the scholars and researchers discussed above. For example, Matthew Meyer is the former Security Threat Group/Investigation Coordinator for the Ohio Department of Rehabilitation and Correction ("ODRC"). Affidavit Of Matthew Meyer at ¶ 1 (Jt. App. 229). As Mr. Meyer explained, gang activity "is a very serious problem with ODRC's institutions" and "is a significant cause of violence between inmates as a result of intra and inter-gang disputes." *Id.* at ¶ 2 (Jt. App. 230). Furthermore, gang activity "creates alternate power structures" that "pose a direct threat to ODRC's ability to maintain safety and security within its prisons." *Id.* (Jt. App. 230).

Mr. Meyer's deposition testimony provides a stark illustration of the very real threat of violence posed by gang members in ODRC's institutions. Mr. Meyer, for example, provided the following testimony regarding one of the putative class members in this case:

Q. Do you know why he received Level 3 participation?

A. Yes I do.

Q. Could you tell me.

A. He received it for sure – for one reason, from the fact that he killed Officer Davis in '92 at Mansfield.

Q. And could you tell me again what Level 3 meant.

A. Disruptive.

Q. Could you read the paragraph below notes.

A. Yes. It says inmate killed CO Davis in '92 at Mansfield. Incident believed to be Aryan Brotherhood related.

Q. What was the ethnicity of Officer Davis?

A. He was black.

Deposition Of Matthew Meyer at 62-63 (Jt. App. 148). Similarly, another putative class member was involved with the stabbing of a black inmate as a result of a power fight within the Aryan Brotherhood. *Id.* at 70 (Jt. App. 154). Finally, Mr. Meyer offered the following testimony:

Q. Let me put it this way: Could you please mention any personal

experiences you have to support your conclusion in Paragraph 3 of your affidavit.

A. Well, I guess one of the – the biggest experiences I have is the Lucasville – SOCF riot on April 11th, 1993, wherein a group of inmates – actually three different security threat groups were involved in a riot which took the lives of, I believe, nine inmates and one staff member, cost the State roughly $63 million.

Id. at 82 (Jt. App. 159). In short, control of gang activity within correctional institutions is not simply a matter of administrative convenience, but literally a matter of life and death for inmates and correctional staff.

II. Gang Members Seek Religious Accommodations In Order To Obtain Exemptions From The Highly Regulated Corrections Environment.

Given the highly regulated nature of correctional institutions, the practice of religion presents one of the few opportunities for inmates to obtain special privileges or exemptions from normal limitations on daily activities. "Inmates who are members of religious groups in correctional facilities are entitled to be accommodated in accordance with their religions' mandates, and thus 'religious' inmates receive special privileges." Davis, Heather, *Comment: Inmates' Religious Rights: Deference To Religious Leaders And Accommodation Of Individualized Religious Beliefs*, 64 Alb. L. Rev. 773, 784 (2000). These special privileges often include possession of religious literature and objects, and accommodations for diet and appearance. *Id.*

The practice of religion also provides one of the few opportunities for inmates to meet in a group setting. In the federal prison system, for example, the "chapel is one of the few areas . . . where large numbers of inmates are permitted to meet as a group and to converse." *A Review Of The Federal Bureau Of Prisons' Selection Of Muslim Religious Services Providers* (U.S. Department of Justice, Office of the Inspector General April 2004) ("Review") at 39. In short, "belonging to a religious group while incarcerated is one of the few ways to actually receive more privileges and alter the conditions of confinement." Davis, *supra*, at 784-785.

Gang members are well aware of the legal protections afforded to religious practice, and unfortunately, seek to take advantage of these special privileges. In one survey of prison gang members, one third of the members admitted that their groups had used "religion as a 'front' for gang business." Zaitzow, Barbara H., Ph.D. and Houston, James G., Ph.D., *Prison Gangs: The North Carolina Experience*, Journal Of Gang Research, Vol. 6, No. 3 (Spring 1999) at 29. As one scholar concluded, "[u]nder law today, almost anything, including witchcraft, could be protected as an established system of beliefs (i.e., having the protections afforded to mainstream religions). Prison inmates in America have certainly discovered this loophole." Knox, George W., Ph.D., *An Introduction To Gangs* (New Chicago School Press 2000) ("Introduction To Gangs") at 232; *see also* Affidavit Of Matthew Meyer at ¶¶ 16-17 (Jt. App. 234-235) (gangs "frequently use religion to facilitate and cover their illicit activities"); Affidavit Of David Schwarz at ¶¶ 11-12 (Jt. App. 202) ("many gangs have adopted 'religious' postures to [] obtain protection for their illicit activities").

The ability to meet in a group setting is one of the most powerful privileges, which gang members abuse by becoming religious adherents. "[I]nmates who are otherwise

separated can come together to attend congregate religious activities, where they can plan and execute the operations of their [gang]." Affidavit Of Matthew Meyer at ¶ 16 (Jt. App. 234). "Gang members in prison know this routine: they go to chapel to act like they are a prayer group, but it is just a meeting place for the gang members to transact business." Knox, Introduction To Gangs, *supra*, at 21.

For example, a gang operating in a District of Columbia prison "used 'religious' activities to facilitate prostitution, drug dealing and the production and distribution of pornography within that prison." Affidavit Of Matthew Meyer at ¶ 16 (Jt. App. 235); *see also* Frey, Sara Anderson, *Comment: Religion Behind Bars: Prison Litigation Under The Religious Freedom Restoration Act In The Wake Of Mack v. O'Leary*, 101 Dick. L. Rev. 753, 772-773 (1997). Similarly, in Wyoming, prison officials "felt compelled by RFRA to allow a group of 'Luciferians' to have an unsupervised service in the prison chapel. In an apparent burst of religious enthusiasm, the Luciferian inmates burned Christian hymnals and Bibles . . . causing substantial smoke damage to the Chapel . . . and, obviously, creating a significant safety hazard to the life and safety of all inmates and staff within the institution." Tucker, Kim, *Preliminary Results Of The RFRA Survey Of All States: The Impact Of The Religious Freedom Restoration Act On State Correctional Systems* (Florida Attorney General's Office 1996) at n.3 (Jt. App. 213).

Abuse of religious accommodations is particularly rampant among white supremacist gangs. "Christian Identity and Asatru/Odinism are the two religions most commonly used by white supremacists to get religious privileges[.]" *Dangerous Convictions: An Introduction To Extremist Activities In Prisons* (Anti-Defamation League 2002)

("Dangerous Convictions") at 35.[3] "Asatru" is "an Icelandic term for an ancient pagan Northern European religion that has been revived in modern times" and which "incorporates the worship of Odin, Thor and other Norse gods and goddesses." *Id.* at 37. Odinism is a form of Asatru. *Id.* Christian Identity, in turn, "is a racist and anti-Semitic religious sect whose members believe that whites are the descendants of the Lost Tribes of Israel and are God's chosen people; many also believe that Jews are descended from Satan." *Id.* at 26. Christian Identity includes such racist groups as Aryan Nations. *Id.* at 35.

These white supremacist groups are well aware of the accommodations made for religious adherents and actively seek to exploit them. In one Christian Identity newsletter, for example, inmates were advised as follows:

> 'You are not compromising your faith or your race [] by setting the services up on an established framework or constitution . . . or an established fundamentalist Christian denomination recognized by prison officials . . . Obtain a list and choose the most appropriate one, and study their organization. Then, when worship begins, the . . . Israel message may be gradually introduced and no red flags will pop up. If any minorities attended at the outset, they'll soon leave out of boredom. The Holy Bible is the Life Manual of the white race!'

Dangerous Convictions, *supra*, at 34.

In addition to using literature for recruitment and training, white supremacist groups also use "religious" symbols for identification purposes. "Thor's hammer" is an

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[3] Available at http://www.adl.org/learn/Ext_terr/Dangerous_Convictions.pdf.

example of a gang symbol used by Asatru/Odinists. *See* Dangerous Convictions, *supra*, at 39. Such "identifiers" are used to indicate gang affiliation, to "build unity and cohesiveness," and to "identify each other for purposes of violent altercations." Affidavit Of Matthew Meyer at ¶¶ 12-14 (Jt. App. 233-234).

Not surprisingly, correctional institutions "have struggled with the issue of political and ideological groups, including hate groups, masquerading as religious organizations." Developments, *supra*, at 1903-1904. Nonetheless, despite concern regarding the adoption by white supremacist groups of pagan religions such as Odinism and Asatru, "these groups have gained wide acceptance as prison religious communities, and most states permit them to function at some level." *Id.* at 1903-1904; *see also* Dangerous Convictions, *supra*, at 39.

As the U.S. Department of Justice has concluded, "[p]rison systems throughout the world have been and continue to be breeding grounds for radicalism, recruiting grounds for extremist movements, and facilities for the planning and training of radical activities." Review, *supra*, at 6.

III. The Least Restrictive Means Test Greatly Exacerbates The Abuse Of Religious Accommodations.

RLUIPA, like RFRA before it, imposes a least restrictive means test on corrections administrators. The least restrictive means test has greatly exacerbated gang members' abuse of religious accommodations in three ways: (1) it has promoted the proliferation of various religions, including numerous pagan "religions" dominated by white supremacists, such as Odinism and Asatru; (2) it has caused the number of inmate "religious" demands to skyrocket,

creating an excessive burden on correctional chaplains and officials, and often causing a reduction in the provision of religious services to inmates; and (3) it has caused an excessive entanglement of corrections officials with religion by forcing those officials to scrutinize closely every claimed "religion" and every request for "religious" accommodation.

A. The Least Restrictive Means Test Promotes Religion.

Prior to enactment, one concern about RFRA was "that inmates would learn to create 'religions' just to obtain special benefits or to avoid certain prison regulations." Frey, *supra*, at 765. This is, in fact, what happened. In 1996, the Florida Attorney General's Office conducted a survey of state and territorial correctional institutions regarding the impact of RFRA. *See* Tucker, *supra* (Jt. App. 207). The survey revealed that the "enactment of RFRA has resulted in the proliferation of claims for exemptions from prison security regulations and requests for special privileges, grounded in obscure or previously little-known 'religions', including: Wicca, Satanism, Odinism, Asartu, and Luciferianism." (Jt. App. 210).

One recent survey of state correctional officials determined that the "average number of religious groups listed by state correctional departments is approximately twenty." Developments, *supra*, at 1900; *see also id.* at 1896 n.28 (listing thirty-three states surveyed). "Of the states surveyed, Texas lists by far the largest number of faith groups, with 144 distinct religious classifications." *Id.* at 1900. By way of example, the State of Washington recognizes the following twenty-three religions: Astara (Asatru), Buddhism, Church of Christ Scientist, Church of Jesus Christ Christian (Aryan Nation), Hindu, Islam, Jehovah's Witness, Judaism, International Society for Krishna Consciousness, Latter-Day Saints, Moorish Science,

Nation of Islam, Native American, Native American Church, Odinism, Protestant, Rastafarian, Roman Catholic, Seventh Day Adventist, Seventh Day Church of God, Sikh, Unity, and Wicca. *Id.* at 1900 n.48.

As noted previously, several of these "religions" are, in fact, closely identified with white supremacist groups, and are present in the Ohio correctional institutions overseen by respondents in this matter. Affidavit Of Matthew Meyer at ¶¶ 5-6, 9-10 (Jt. App. 231-233). The RLUIPA/RFRA least restrictive means test has undoubtedly been a strong force promoting the proliferation of these "religions."

B. The Least Restrictive Means Test Has Caused An Explosion In Inmate "Religious" Demands.

Imposition of the least restrictive means test has also caused an explosion in inmate "religious" demands. This has greatly burdened corrections officials charged with the provision of religious services, and ironically resulted in a reduction in the ability of those officials to provide religious services to inmates. The 1996 survey conducted by the Florida Attorney General's Office revealed that, after enactment of RFRA, "there has been a tremendous increase in the number of lawsuits and internal demands for 'religiously motivated' alterations of prison practices, creating significant burdens on the resources of corrections systems, state attorneys general, and the courts." Tucker, *supra* (Jt. App. 210).

Again, the experience of the Ohio Department of Rehabilitation and Correction ("ODRC") is consistent with this finding. David Schwarz is the former Religious Services Administrator for the South Region of ODRC. Affidavit Of David Schwarz at ¶ 1 (Jt. App. 199). In that position, Mr. Schwarz oversaw the delivery of religious services and

operational issues involving religious matters. *Id.* His duties included "developing new religious programming, recruiting paid staff and volunteers for the delivery of religious services and acting as a liaison between O.D.R.C. and the religious community at large." *Id.*

Prior to enactment of RFRA, Mr. Schwarz "spent little time on litigation related issues." Affidavit Of David Schwarz at ¶ 3 (Jt. App. 200). After enactment of RFRA, however, Mr. Schwarz was required to spend "between fifteen and twenty percent of [his] time working with the Office of the Ohio Attorney General in connection with lawsuits filed under R.F.R.A." and "between sixty to seventy percent of [his] time working with institutional staff to determine how to comply with R.F.R.A." *Id.* at ¶¶ 3-4 (Jt. App. 199-200). This resulted in "a very significant reduction in the amount of time spent on actually facilitating the delivery of religious services." *Id.* at ¶ 5 (Jt. App. 200). This problem did not affect Mr. Schwarz alone. All religious services personnel were forced to spend more time dealing with RFRA issues, and less time actually providing religious services to inmates. *Id.* at ¶¶ 8-10 (Jt. App. 201-202).

C. The Least Restrictive Means Test Causes An Excessive Entanglement With Religion.

The least restrictive means test also causes an excessive entanglement of corrections officials with religion by forcing those officials to scrutinize closely every claimed "religion" and every request for "religious" accommodation. First, as one commentator noted, "[c]orrectional facility officials lack the requisite knowledge of each religious group's practices, norms, and traditions. Without such knowledge, correctional facility officials are not able to effectively determine whether an inmate is a bona-fide member of a religious group." Davis, *supra*, at 777. As a result of the least restrictive means test, religious services

staff are required to investigate "the authenticity and requirements of such 'religions.'" Affidavit Of David Schwarz at ¶ 12 (Jt. App. 202).

Second, as this Court anticipated, the least restrictive means test "distort[s] the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand." *Turner v. Safley*, 482 U.S. 78, 89 (1987). Corrections officials are well aware of this problem. Because of the least restrictive means test, religious services staff expend large amounts of time to "'set up and shoot down' all possible alternatives for dealing with 'religiously' motivated requests for alterations of normal prison operations." Affidavit Of David Schwarz, Exhibit 1 (Jt. App. 204). Failure to do so opens the possibility of judicial second-guessing noted by this Court in *Turner*.

Third, because of the abuse of religious accommodations by gang members, the provision of religious services has, in effect, become a security issue. Corrections officials, however, must still justify every infringement of "religion" under the least restrictive means test. This results in an excessive involvement of corrections officials with every demand for religious accommodation. In ODRC institutions, for example, "a number of white supremacist groups claimed to be pursuing Christian Identity beliefs and the tenants of the Church Of The Creator in an effort to cover their otherwise illicit, and disruptive activities[,]" while other inmates sought to establish "several new 'religions' which purported to require such accommodations as group martial arts classes." Affidavit Of David Schwarz at ¶ 11-12 (Jt. App. 202). Obviously, the "cumulative result of these activities was that religious staff were required to devote significant amounts of time to investigating the legitimacy [sic] these 'religious' groups and their 'religious' claims in

order to assist security staff in dealing with the problems posed by those groups[.]" *Id.* at ¶ 11 (Jt. App. 202).

In sum, this Court has previously recognized that the "evaluation of penological objectives is committed to the considered judgment of prison administrators" and that corrections officials should have the ability "'to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration[.]'" *O'Lone v. Estate Of Shabazz*, 482 U.S. 342, 349 (1987). RLUIPA, like RFRA before it, prevents corrections administrators from doing so. The problem of gang violence, along with abuse by gang members of religious accommodations and the corresponding threat to the health and safety of inmates and corrections staff, is one such intractable security problem that should be left to the considered judgment of corrections administrators.

CONCLUSION

For the foregoing reasons, the *amici curiae* urge the Court to affirm the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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